injury by accident, [12] while the Massachusetts court has held it to be covered by the phrase "personal injury" not qualified by the word "accident." [13]

From the two cases last cited and others it seems that the phrase "personal injury by accident" does not include what are sometimes called occupational diseases, [14] while the simple term "personal injury" does include such diseases.[15] Many of the workmen's compensation acts, however, expressly provide for diseases either by expressly excluding or including them, or providing that compensation hall be given in certain enumerated cases.

LIABILITY OF MANUFACTURER TO PERSONS NOT IN PRIVY OF CONTRACT, FOR INJURY FROM DEFECTS IN THE ARTICLE SOLD.—The general rule is that the manufacturer of an article is not liable to third persons, not in privity of contract, for injury due to the negligent construction of such article.[1] Though the rule may bring about some hardship, and even result in injustice in individual cases, the policy of the law requires that there be a limit to liability imposed on persons for their negligence. The consequences of an opposite view would be far reaching and result in an enormous amount of litigation, which in the end would work great difficulty, especially in measuring the responsibility of the defendant.

But the law does impose a liability on the manufacturer of an article to an extent necessary to the protection and safety of third persons who come in contact with the product but who have no contractual relations with the producer. The basis of this liability must rest on some duty which the defendant owes to the public, and which he has neglected to carry out, to the injury of the plaintiff.[2] The cases which arise under this subject may be grouped into

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[12] Steel *v.* Cammell, *supra.*

[13] Johnson's Case, *supra.* The case of Adams *v.* Acme, etc., Co., 182 Mich. 157, 148 N. W. 485, 6 N. C. C. A. 482, which holds that poisoning by white lead was not within the Michigan act, can be distinguished from Johnson's Case on the ground the Michigan court read the word "accident" into the act partly because it was used in the title.

[14] Steel *v.* Cammell, *supra*; Broderick *v.* London County Council, *supra*; Liondale Bleach, Dye and Paint Works *v.* Riker, 85 N. J. L. 426, 89 Atl. 929.

[15] Hurle's Case, *supra.* See Industrial Commission of Ohio *v.* Brown (Ohio), 110 N. E. 744, 745, where it is said by Nichols, C. J: "This court, with much show of logic and also authority, could construe this phrase as did the courts below. It is not difficult to bring within the purview of the words 'personal injuries sustained in the course of employment' occupational diseases incurred in the course of employment. It can be further conceded that, had the Legislature, in enacting either the original or present law, desired to make plain its intention to exclude occupational diseases from participation in the fund, the exclusion could easily have been made by adding to the words 'personal injuries' the qualifying phrase 'by accident.'"

[1] Winterbottom *v.* Wright, 10 M. & W. 109; Goodlander Mill Co. *v.* Standard Oil Co., 63 Fed. 400, 27 L. R. A. 583.

[2] Thomas *v.* Winchester, 6 N. Y. 397, 57 Am. Dec. 455. See Van Winkle *v.* Am. Steam-Boiler Ins. Co., 52 N. J. L. 240, 19 Atl. 472.

two classes: (1) Where the thing causing the injury is an imminently dangerous article on account of its defective construction, known to the producer. (2) Where the thing causing injury is inherently or intrinsically dangerous, or became imminently dangerous by reason of the negligence of the producer in its construction.

The liability, in the first class of cases, seems to rest on the ground of fraud. If one knowingly manufactures and places on the market an article which, by reason of defective construction, becomes imminently dangerous, without giving notice of its faulty character, he is liable to all persons who are injured thereby, irrespective of contract.[3] The producer is guilty of a gross wrong by concealing the defects, and his conduct warrants an action for willful and fraudulent deceit.[4] The justice of this doctrine is apparent, and the courts do not hesitate to apply the rule at every opportunity.

A distinction should be made between articles which are inherently dangerous and those which are imminently dangerous due to defective construction. An inherently or intrinsically dangerous article is one that is not merely dangerous by reason of faulty construction,[5] but dangerous in its very nature or existence.[6] A person who deals with an inherently or intrinsically dangerous article stands in such a relation to the public that the law imposes an affirmative obligation upon him, which public policy requires to be strictly enforced. He owes a public duty to employ proper care, skill, and diligence in the production of the article, so as not to endanger the lives and property of persons who may be reasonably expected to come in contact with the product.[7] Some of the things which fall within this class are poisons, poisonous drugs, dynamite, gun powder, and dangerous chemicals. The producer of these articles knows their composition and quality, and must use proper care to see that there is no negligence in the process of manufacture. The very nature of his business demands that he be held responsible for any damage or injury due to the faulty character of the product. The authorities seem unanimous in holding the manufacturer liable to third persons regardless of contract.[8]

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[3] Kuelling *v.* Lean Manufacturing Co., 183 N. Y. 78, 75 N. E. 1098, 111 Am. St. Rep. 691, 2 L. R. A. (N. S.) 303, 5 Ann. Cas. 124; Schubert *v.* Clark Co., 49 Minn. 331, 51 N. W. 1103, 15 L. R. A. 818 (holding that the sale of a step ladder by a manufacturer with knowledge that it was defective, rendered him liable to third persons for injuries arising out of the defect).

[4] Huset *v.* Case Threshing Mach. Co., 120 Fed. 865, 61 L. R. A. 303; Lewis *v.* Terry, 111 Cal. 39, 43 Pac. 398, 82 Am. St. Rep. 146, 31 L. R. A. 220 (folding bed represented to be safe but defectively constructed).

[5] See Statler *v.* Ray Manufacturing Co., 195 N. Y. 478, 88 N. E. 1063 (coffee urn defectively constructed).

[6] Thomas *v.* Winchester, 6 N. Y. 396, 57 Am. Dec. 455 (a poisonous drug labeled harmless)

[7] Peters *v.* Johnson, 50 W. Va. 644, 41 S. E. 190, 88 Am. St. Rep. 909. 57 L. R. A. 428; Norton *v.* Sewall, 106 Mass. 143, 8 Am. Rep. 298.

[8] See note 7, *supra.*

As to application of the principle governing the remaining cases in the second class, the authorities are not in harmony. The basis of the liability rests on the theory of negligence. The rule laid down by the numerous cases upholding the doctrine of the liability of the manufacturer is that, one who manufactures and places on the market an article which is imminently dangerous to the lives of others by reason of some defects in construction, which could have been discovered by the exercise of reasonable diligence, is guilty of such negligence as to warrant his liability to third persons irrespective of contract.[9] The conflict among the authorities seems to be rather in respect to the extent of the application of this doctrine than to the principle itself. There are many respectable authorities which hold that liability for negligence must be limited, and, in the absence of contract, unless the article causing the injury was more or less inherently dangerous, or unless the defendant was guilty of deceit, no action will lie.[10] In the recent case of *MacPherson* v. *Buick Motor Car Co.* (N. Y.), 111 N. E. 1050, a manu-

[9] Statler *v.* Ray, *supra* (explosion of defective coffee urn); Kahner *v.* Otis Elevator Co., 96 App. Div. 169, 89 N. Y. Supp. 185 (negligence in repair of elevator); Delvin *v.* Smith, 89 N. Y. 470, 42 Am. Rep. 311 (builder of defective scaffold liable to contractor's employees); Torgesen *v.* Schultz, 192 N. Y. 156, 84 N. E. 956, 127 Am. St. Rep. 894, 18 L. R. A. (N. S.) 726 (explosion of bottle of aërated water). A bottle of water under gas pressure is often classed as an inherently dangerous article.

"In all cases in which any person undertakes the performance of an act, which, if not done with due care and skill, will be highly dangerous to the person or lives of one or more persons, known or unknown, the law, *ipso facto*, imposes, as a public duty, the obligation to exercise such care and skill." Van Winkle *v.* Am. Steam Boiler Ins. Co., *supra*. As to the liability of a manufacturer to third persons for negligence in the preparation of canned food stuffs, see Tomlinson *v.* Armour & Co., 75 N. J. L. 748, 70 Atl. 314, 19 L. R. A. (N. S.) 923, and note; Mazetti *v.* Armour & Co., 75 Wash. 622, 135 Pac. 633, 48 L. R. A. (N. S.) 213, and note. As to the liability of the manufacturer of patent medicines, see Blood Balm Co. *v.* Cooper, 83 Ga. 457, 10 S. E. 118, 20 Am. St. Rep. 324, 5 L. R. A. 612; Wilson *v.* Flaxon, 208 N. Y. 108, 101 N. E. 799, 47 L. R. A. (N. S.) 693, Ann. Cas. 1914D, 49. The manufacturer of patent medicines and canned food stuffs occupies a peculiar position to the public, in that the article is for human consumption, and the ingredients, in general, are concealed, the consumer being compelled to rely on the diligence of the producer. As to the doctrine of implied invitation in construction contracts see Heaven *v.* Pender, L. R. 11 Q. B. Div. 503; Delvin *v.* Smith, *supra*.

[10] Heizer *v.* Kingsland & D. Mfg. Co., 110 Mo. 605, 19 S. W. 630, 33 Am. St. Rep. 482, 15 L. R. A. 821 (defective cylinder of a threshing machine); Goodlander *v.* Standard Oil Co., *supra*; Huset *v.* Case Threshing Mach. Co., *supra*. In the opinion of the last named case, Circuit Judge Sanborn reviews all the leading American and English authorities. "The case discloses no motive whatever on the part of the defendant for sending out a defective machine. The plaintiff's case tends to show no more than negligence, and an action based on that ground must be confined to the immediate parties to the contract by which the machine was sold." It should be noted, however, that many cases which are cited to support this view are not in conflict with what would seem to be the better doctrine; but liability is denied on the ground that the injury is too remote. Losee *v.* Clute, 51 N. Y. 494, 10 Am. Rep. 638.

facturer was held liable to a third person not in privity of contract for the use of defective wood in the wheels of an automobile which collapsed and resulted in injury to the plaintiff. The wheels were purchased from a reputable dealer,[11] but the defects could have been discovered by the defendant upon proper inspection. The plaintiff purchased the automobile from a dealer who had bought it from the defendant. The basis of the liability rested on the negligence of the defendant in not making proper tests. The maker of an automobile knows it will be used by persons other than the purchaser, and the very nature of the article is such as is reasonably certain to endanger life, if negligently constructed. This alone should be a sufficient warning to the manufacturer. It is not the mere possibility of danger, for here there is no liability independent of contract; but the knowledge of probable danger. The very fact that the defendant is a manufacturer seems sufficient to charge him with notice of defects of construction. In a legal sense he is a specialist, and his liability is but commensurate with the high degree of care exacted of him. The facts of *Cadillac Motor Car Co.* v. *Johnson,*[12] are exactly the same as *MacPherson* v. *Buick Motor Car Co., supra;* but the contrary was held.[13] In that case, an automobile is classed with such articles as chairs, tables, mirrors hung on walls, carriages, and articles dangerous only if defectively made or installed. This classification seems hardly correct. An automobile is not an inherently dangerous article, but is an article which may become imminently dangerous by defective construction.[14] A gun, the authorities agree, is an imminently dangerous article. In the absence of defects, a gun is not dangerous to life if correctly

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[11] "The law imposes a duty of constructing a safe machine upon the manufacturer. He cannot avoid this duty by buying his materials from others. He is responsible for the car sold as having been manufactured by him." Cadillac Motor Car Co. *v.* Johnson, 221 Fed. 801, 806; L. R. A. (N. S.) 1915E, 287, 294, dissenting opinion.

[12] 221 Fed. 801, L. R. A. 1915E, 287.

[13] But see dissenting opinion. See also, Olds Motor Works *v.* Schaffer, 145 Ky. 616, 140 S. W. 1047, 37 L. R. A. (N. S.) 560, Ann. Cas. 1913B, 689.

[14] "But this does not mean that the article must be at all times and under all conditions imminently dangerous. This would be entirely too narrow a construction to place upon the meaning of these words as used in the opinions; and while the words 'imminently dangerous' will be often found, the disposition of the cases in which they are used shows that they were used in a broad and liberal sense. Many articles are very simple and safe in their use and construction, and under no conditions could be regarded as dangerous in their use. On the other hand, there are a great many things in common use that are dangerous, unless they are safely and properly constructed. This is especially true of machinery that is operated by power of any kind. * * * If an automobile is defectively or insufficiently constructed, there can be no doubt that it is an imminently dangerous thing to life and limb. * * * So there can be no room for two opinions about the proposition that an automobile comes well within the class of articles for which the manufacturer may be held liable to third persons for injuries sustained on account of defective construction." Olds Motor Works *v.* Schaffer, *supra.*

used, but it may become dangerous if carelessly used. The same will apply to an automobile: though it be properly constructed, if negligently driven it becomes imminently dangerous. If a gun is defectively constructed, it is imminently dangerous in the hands of a careful user. Likewise, an automobile, if defectively constructed, is an imminently dangerous article, even in the hands of a careful driver. No distinction can be drawn between them.[15] A distinction may be made between carriages and wagons, and motor driven vehicles as regards the constant strain; but even as to the former, it seems that it would correctly be classed as such a dangerous article, if defectively constructed, as to warrant liability to third persons for an injury resulting from the negligent construction. Of course, in determining the liability in each particular case, the proximity and remoteness must be considered. If there is negligence in the face of danger which can be reasonably foreseen, a liability should follow.[16] The policy of the law demands a fixed responsibility for the protection and safety of human life, and cannot suffer one to conduct himself in such a negligent way as to place life in danger, without incurring any liability. Cases of this kind deserve a liberal construction, and most of the authorities do not seem to hesitate to extend the doctrine whenever reason and justice require it.

RIGHTS OF THE CREDITORS OF A CORPORATION THE ENTIRE ASSETS OF WHICH HAVE BEEN TRANSFERRED TO ANOTHER CORPORATION. —Consolidation is a generic term, and is frequently used to include within its scope many transactions varient greatly in their legal results. A merger of corporations is often confused with consolidation. Though the two classes of transactions are in many respects similar yet they differ greatly in the legal consequences flowing from them. Used in its strictest sense, a consolidation of corporations implies a corporate union of two or more existing corporations, so that for practical purposes the old corporations cease to exist and a new and distinct legal entity is formed.[1] A merger of corporations, on the other hand, occurs where an existing corporation absorbs within itself the other constituent corporations.[2] The usual mode of effecting both consolidation and merger is for the absorbing company to issue its stock to the shareholders of the constituent companies in exchange for their stock in those companies. In which event, if the effect be a consolidation, the stockholders of the con-

[15] See, for discussion, note to Cadillac Motor Car Co. *v.* Johnson, L. R. A. 1915E, 287.

[16] MacPherson *v.* Buick Motor Car Co. (N. Y.), 111 N. E. 1050 (instant case); Olds Motor Works *v.* Schaffer, *supra.*

[1] Keokuk & W. R. Co. *v.* Missouri, 152 U. S. 301; Morrison *v.* American Snuff Co., 79 Miss. 330, 30 South. 723, 89 Am. St. Rep. 598; Railroad Co. *v.* Georgia, 98 U. S. 359.

[2] Central R. & B. Co. *v.* Georgia, 92 U. S. 665. The distinction between consolidation and merger is well brought out in Vicksburg & Yazoo City Tel. Co. *v.* Citizens' Telephone Co., 79 Miss. 341, 30 South. 725, 89 Am. St. Rep. 656.